94 S. C. 439, 78 S. E. 327; *State v. Graham* (1876) 74 N. C. 646; *State v. Thompson* (1912) 161 N. C. 238, 76 S. E. 249; see (1918) 27 YALE LAW JOURNAL, 412; see also (1919) 28 *ibid.*, 703.

NEGLIGENCE—CERTIFIED PUBLIC ACCOUNTANTS.—The defendants were certified public accountants and as such audited the books and accounts of a certain company. The plaintiff purchased stock in the company, relying upon the defendant's audit, which was shown to him by a third party. The plaintiff and this third party were both strangers to the contract of accounting between the defendants and the company. The defendants had been negligent in their audit and the plaintiff suffered loss thereby, as the stock was in fact worthless, contrary to the figures of the defendant's audit. The plaintiff sued in an action of trespass for the damages resulting to him from this negligence. *Held,* that the plaintiff could not recover because the defendants were not liable to anyone not a party to the contract for the accounting. *Landell v. Lybrand* (1919, Pa.) 107 Atl. 783.

In the principal case, the defendants owed the plaintiff no contractual duty. But courts realize that in some similar cases of negligence, a contractual duty is unnecessary to support an action; and have allowed recovery by third persons where the negligence was such that it was inherently dangerous, and the resulting damage was reasonably forseeable by ordinarily prudent men. *Wolcho v. Rosenbluth* (1908) 81 Conn. 358, 71 Atl. 566; see COMMENT (1918) 27 YALE LAW JOURNAL, 1068. The principal case seems to be in accord with the existing law, but its justice and expediency are questionable. It has been held that certified public accountants constitute a skilled professional class and are liable for negligence to one who employs them. *Smith v. London Assurance Corporation* (1905) 109 App. Div. 882, 96 N. Y. Supp. 820. Stock companies are accustomed to advertise, as an assurance of their good standing, that certain named public accountants have audited their books and accounts and have certified to their financial standing. Public expediency demands, aside from the criminal aspect, that accountants who have been guilty of fraud in such cases should be held liable to one who, relying in good faith upon their certified audit as they intended he should, bought stock and thereby suffered loss. Furthermore, it seems that public accountants, who are recognized as a responsible class in the business world, should be compelled to exercise due care in their audits, upon which, as can be reasonably forseen, many strangers may act. And all the more so, because they have the election to contract or not. However, an attorney who acted in good faith has been held not liable to third persons in an action of tort for negligence. *Campbell v. Brown* (1876, C. C. W. D. Tex.) 2 Woods, 349. But an attorney cannot reasonably be expected to forsee that strangers will probably act on his advice, for experience shows otherwise. And this reasoning seems to apply also to cases of physicians, because a doctor prescribes for a particular patient and does not intend, nor is it reasonably probable, that third parties will rely and act upon his advice to this particular patient. But neither of these classes of cases conflicts with the proposition that public accountants should be held liable to third parties for negligence, when it is reasonably forseeable that third parties may act upon their audits. And if the courts will not impose this duty to the public, then it is submitted that this is a case for legislative enactment.

NEGLIGENCE—CONTRIBUTORY NEGLIGENCE—EMPLOYMENT OF INFANTS.—The plaintiff was employed to run an elevator in violation of a statute which provided that no child under sixteen years of age should be employed or permitted to operate an elevator. The plaintiff was injured while so employed and sued for personal

injuries. The court charged the jury that if the plaintiff was guilty of contributory negligence, he could not recover. *Held,* that this instruction was erroneous, because an action for injuries arising in the course of such prohibited employment cannot be defeated by the plaintiff's contributory negligence. *Karpeles v. Heine* (1919, N. Y.) 124 N. E. 101.

The legislature contemplated a special danger to children working in industries because of the characteristics incident to their immaturity, and this was one of the chief purposes of forbidding their employment in industrial establishments. *Stehle v. Jaeger Automatic Mach. Co.* (1909) 225 Pa. St. 348, 74 Atl. 215. Many cases have held that where a child is injured while employed in an industry in violation of a statute, contributory negligence is no defence. *De Soto Coal Mining & Development Co. v. Hill* (1912) 179 Ala. 186, 60 So. 583; *Lenahan v. Pittston Coal Mining Co.* (1907) 218 Pa. St. 311, 67 Atl. 642; *American Car & Foundry Co. v. Armentraut* (1905) 214 Ill. 509, 73 N. E. 766. If a statute prohibiting the employment of minors in dangerous industries not only creates a civil but also a criminal liability, the employment has been classed with ordinary acts of gross negligence, and the general rule applied that where the defendant is guilty of gross negligence, contributory negligence of the person injured is immaterial. *Leora v. Minn. St. P. & S. S. Marie Ry.* (1914) 156 Wis. 386, 146 N. W. 520. On the other hand, many cases have taken the moderate view that employment of a child under a certain age, in violation of a statute, is negligence in the employer and will exclude him from the defence of contributory negligence, unless it be shown that the child had experience and intelligence, notwithstanding his age, to enable him to appreciate and avoid the dangers of service. *Norman v. Virginia Pocahontas Coal Co.* (1910) 68 W. Va. 405, 69 S. E. 857; *Beghold v. Auto Body Co.* (1907) 149 Mich. 14, 112 N. W. 691; 12 L. R. A. (N. S.) 461, note. This is properly a question for the jury. *Sterling v. Union Carbide Co.* (1905) 142 Mich. 284, 105 N. W. 755; *Rolin v. Reynolds Tobacco Co.* (1906) 141 N. C. 300, 53 S. E. 891. Finally, the extreme view has been held that the rule requiring the plaintiff, in an action for negligence, to show due care on his part is the same in actions brought under a statute as at common law, unless the statute itself provides otherwise. *Taylor v. Carew Mfg. Co.* (1887) 143 Mass. 470, 10 N. E. 308. It has been held that Workmen's Compensation Acts do not affect such a statute as the one in the principal case. See (1919) 28 YALE LAW JOURNAL, 509. It would seem that the moderate view should be applied in most cases, except where the intent of the statute was to impose absolute liability for its violation, irrespective of contributory negligence.

NEGLIGENCE—CONTRIBUTORY NEGLIGENCE—SOLDIER UNDER ORDERS.—The plaintiff, a private in the United States Army, was ordered to guard a bridge on the defendant's railroad. He was directed to walk up and down a four foot space between the two tracks, but, if a train approached, to step onto the track which remained clear. While he was on duty with these directions, a train approached. He stepped onto the other track, which appeared clear, and was hit by an express train coming from the other direction. He sued the railroad company for the injuries which resulted. The trial court held that he was guilty of contributory negligence in failing to step into the intermediate space instead of onto the other track, and withheld the case from the jury. *Held,* that this ruling of the court was erroneous. *Kelly et al. v. Pennsylvania R. R.* (1919, Pa.) 107 Atl. 780.

A soldier is liable to court martial for wilful disobedience of a lawful order or command of a commissioned or non-commissioned officer. A. W. 64, 65. Orders to commit treason or certain other kinds of crimes are, of course, unlawful and inoperative. *United States v. Greiner* (1861, U. S. D. Pa. E. D.) 4 Phila. 396. The same is true of orders issued without regularly constituted authority.